REMARKS

Claims 1-58 are pending. There are no amendments submitted with this response.

Claims 1-4, 6-46, and 49-58 have been provisionally rejected on the ground of obviousness-type double patenting over claims 1-8 of copending application ser. no. 10/778904. This rejection is respectfully traversed.

First, as explained in MPEP 804B.1, this type of obviousness double-patenting, in which the claims of an earlier-filed application are held to be obvious in view of a later filed application, requires a showing of two-way obviousness. This application was filed on February 13, 2002, while the cited application was filed two years later. If the Patent Office had acted promptly, this double-patenting rejection could never have arisen. The administrative delay at the Patent Office caused this situation to occur. Furthermore, applicants could not have claimed the invention described in claims 1-8 of application ser. no. 10/778904 for the simple reason that the invention did not exist at that time. Thus, the two-way test for obviousness applies. Thus, even if the present claims were obvious over claims 1-8 of the '904 patent, claims 1-8 of the '904 application are not obvious over the pending claims of this application. Indeed, the Office Action does not even allege that claims 1-8 of the '904 patent are obvious over the pending claims of this application. Since the pending claims are not obvious under the two-way test for obviousness, the obviousness-type double-patenting rejection must be withdrawn.

Secondly, even if only a one way test of obviousness is applied, the claimed invention is not obvious over claims 1-8 of the '904 application. The Office Action states:

"The claims of 10/778904 do not include the limitations regarding catalyst characteristics. However, the portions of the 10/778994 specification that provide support for the catalyst limitations disclose catalyst having similar features as claimed in the present application."

This is an improper basis for an obviousness-type double-patenting rejection. "When considering whether the invention defined in a claim of an application would have been an obvious variation of the invention defined in the claim of a patent, the disclosure of the patent may not be used as prior art." *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1279, 23 USPQ2d 1839, 1846 (Fed. Cir. 1992). Furthermore, the limitations in the present claims (i.e., catalyst pore structure, etc.) are not found in the portions of the '904 specification that provide support for claims 1-8 of the '904 application. Therefore, even if only a one-way test is applied, the claimed invention is not obvious over claims 1-8 of the '904 specification.

Accordingly, withdrawal of the provisional, obviousness-type double patenting rejection in favor of allowance of all claims is respectfully requested.

Conclusion

If the Examiner has any questions or would like to speak to Applicants' representative, the Examiner is encouraged to call Applicants' attorney at the number provided below.

Respectfully submitted,

Date: __11 January 2007___

By: ___/Frank Rosenberg/_____

send correspondence to:
Frank Rosenberg
P.O. Box 29230
San Francisco 94129-0230
fax. no. 415-738-4229

Frank Rosenberg
Registration No. 37,068
tel: (415) 383-3660